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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,417	08/16/2000	Noel Morel	33428-PCT-USA-A	4877
21003	7590	11/26/2003		
BAKER & BOTTS 30 ROCKEFELLER PLAZA NEW YORK, NY 10112				
			EXAMINER FISCHER, JUSTIN R	
			ART UNIT 1733	PAPER NUMBER 18

DATE MAILED: 11/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/641,417

Applicant(s)

MOREL, NOEL

Examiner

Justin R Fischer

Art Unit

1733

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 09 October 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: 4.

Claim(s) rejected: 1-3.

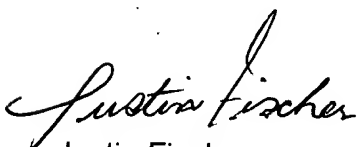
Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.

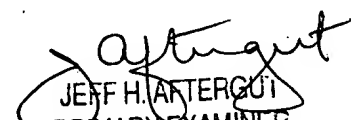
Continuation of 2: The proposed amendment contains the following language that was not previously required by the claims: (i) a vehicle tire **for highway use** and (ii) two sidewalls of **single rubber mixes**. As such, the claims require further search and consideration. It is additionally noted that that the language **single rubber mix** constitutes new matter since the original disclosure only described two rubber sidewall mixes (one in each sidewall)- the original disclosure failed to describe the sidewall mixes as "single" rubber mixes (language that appears to exclude multi-layer sidewalls).

Continuation of 5: The declaration filed November 13, 2003 has been entered and considered. The declaration is found to be persuasive regarding the rejections using Hashimura. Thus, the rejections using Hashimura have been withdrawn. In particular, it is unclear whether Hashimura intended the dashed line to representative of the tread layer being laid over the sidewall mix without a joint cover- the dashed line could be representative of an additional tire feature, for example the depth of the tread grooves as argued by applicant. However, regarding the rejections using Matsuyama, the declaration is not found to be persuasive. The sole argument of the declaration (number 9) regarding Matsuyama is directed to new issue #2 mentioned above and as such, the argument fails to address the pending claim language.

As to applicant's arguments, the rejections in Paper Number 13 using Matsuyama address each of the relevant arguments, it being noted that the applicant provides arguments regarding "highway" use and "single" rubber mix, each of which is a new issue and has not been considered.


Justin Fischer

November 24, 2003


JEFF H. ATERGUIT
PRIMARY EXAMINER
GROUP 1300